

**(2) Idaho**

Qwest's performance results show that Qwest has performed above the 95 percent benchmark for PIDs OP-8B and OP-8C in every month from January through April 2002. *Id.* From January through March, Qwest set between 99.62 and 100 percent of LNP triggers for coordinated loop cutovers prior to the scheduled start time for the loop. *Id.* There were no orders requiring LNP coordinated loop cutovers in April. *Id.* In the same period, Qwest also set between 98.71 and 100 percent of LSA triggers for LNP orders not requiring loop coordination prior to the scheduled start time for the LNP cutover. *Id.* Qwest's performance under the new LNP PIDs was equally outstanding: in every month, Qwest completed 100 percent of CLEC ports without implementing associated disconnects before the scheduled time/date, consistently performing well in excess of the 98.25 percent benchmark for OP-17. *Id.* at 26. In addition, in the same period, there were no wholesale LNP trouble reports. *Id.*

**(3) Iowa**

Qwest's performance results show that Qwest has performed above the 95 percent benchmark for PIDs OP-8B and OP-8C in every month from January through April 2002. *Id.* From January through March, Qwest set between 99.23 and 100 percent of LNP triggers for coordinated loop cutovers prior to the scheduled start time for the loop (there were no orders requiring LNP coordinated loop cutovers in April). *Id.* From January through April, Qwest also set between 99.31 and 99.95 percent of LSA triggers for LNP orders not requiring loop coordination prior to the scheduled start time for the LNP cutover. *Id.* at 26-27. Qwest's performance under the new LNP PIDs was equally outstanding: during every month, Qwest completed 100 percent of CLEC ports without implementing associated disconnects before the scheduled time/date, consistently performing greatly in excess of the 98.25 percent benchmark

for OP-17. Id. at 27. In addition, in the same period, Qwest received only two wholesale trouble reports, which it cleared at parity. Id.

**(4) Nebraska**

Qwest's performance results show that Qwest has performed above the 95 percent benchmark for PIDs OP-8B and OP-8C in every month from January through April 2002. Id. From January through March, Qwest set 100 percent of LNP triggers for coordinated loop cutovers prior to the scheduled start time (there were no orders requiring LNP coordinated loop cutovers in April). Id. During the four-month period, Qwest also set between 98.41 and 99.83 percent of LSA triggers for LNP orders not requiring loop coordination prior to the scheduled start time for the LNP cutover. Id. at 28. Qwest completed 100 percent of CLEC ports without implementing associated disconnects before the scheduled time/date, consistently performing far above the 98.25 percent benchmark for OP-17 from January through April. Id. Qwest cleared the single CLEC trouble report it received at parity with its retail performance. Id.

**(5) North Dakota**

Qwest's performance results show that Qwest has performed above the 95 percent benchmark for PIDs OP-8B and OP-8C in every month from January through April 2002. Id. During this period, Qwest set between 99.81 and 100 percent of LNP triggers for coordinated loop cutovers prior to the scheduled start time for the loop. Id. at 28-29. In the same period, Qwest also set between 99.23 and 100 percent of LSA triggers for LNP orders not requiring loop coordination prior to the scheduled start time for the LNP cutover. Id. at 29. In addition, during the entire four-month period, Qwest completed 100 percent of CLEC ports without implementing associated disconnects before the scheduled time/date, consistently performing well above the 98.25 percent benchmark for OP-17. Id. There were no CLEC trouble reports from January through April. Id.

**12. Checklist Item 12: Local Dialing Parity**

Qwest satisfies the requirements of Sections 271(c)(2)(B)(xii) and 251(b)(3) of the 1996 Act regarding dialing parity. Qwest has concrete and specific legal obligations to provide dialing parity pursuant to its SGAT and its state regulator-approved interconnection agreements. SGAT § 14.0.; Declaration of Margaret S. Bumgarner ("Bumgarner Item 12 Decl."), Att. 5, App. A, at 3-5.

Qwest provides dialing parity to competitive providers of telephone exchange service and telephone toll service. *Id.* at 9. Qwest does not discriminate against CLECs with respect to the number of digits dialed, post-dialing delays, or quality of service. *Id.* Both CLEC and Qwest customers dial the same number of digits without any access codes for local and toll telephone calls and to access operator and directory assistance services. *Id.*

Qwest also provides CLECs with the same quality of service that Qwest provides to its own end users with no additional post-dialing delays. *Id.* at 9-11. This is so, first, because Qwest does not impose any requirement or technical constraint that would cause CLEC customers to experience longer post-dialing delays or inferior quality service. *Id.* at 10. Second, the design of Qwest's systems and processes ensures the equal treatment of all end user calls. *Id.* The processing of calls in Qwest's central offices is the same for both CLEC and Qwest customers. *Id.* Qwest's network does not distinguish between calls from CLEC end users and calls from Qwest end users. *Id.*

Because the design of Qwest's network ensures that all customers receive the same dialing intervals and quality of service, the participants in the ROC performance measures workshops determined that performance measures and testing are not necessary for this checklist item. *Id.* at 11. The FCC also has determined that performance measures are not necessary for

this checklist item. *Local Competition/Area Code Relief Second Report and Order*, 11 FCC Rcd at 19407, 19467, ¶ 162 (1996).

### **13. Checklist Item 13: Reciprocal Compensation**

Qwest has complied with the FCC's reciprocal compensation requirements, as Qwest's SGAT provides for Qwest and interconnecting local carriers to pay one another symmetrical rates for the transport and termination of local telecommunications traffic. <sup>42/</sup> For transport, interconnecting local carriers may choose either Qwest's Direct Trunked Transport, Tandem Switched Transport, or a combination of the two. <sup>43/</sup> Each option provides transmission of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch or equivalent facility.

For Direct Trunk Transport, when Qwest fulfills a CLEC request for two-way trunk groups used for transport of interconnected traffic, Qwest's cost recovery emulates one-way trunking. A "relative use factor" reduces a CLEC's Direct Trunked Transport charges by reflecting only the proportion of traffic that flows to Qwest from the CLEC over the trunk. <sup>44/</sup> During the workshop process, Qwest agreed to allow CLECs to establish a local exchange trunk group on facilities purchased from interstate access tariffs as transport for exchange access. *See* SGAT § 7.3.1.1.2; Freeberg Recip. Comp. Decl. at ¶ 24. However, while all of the State Authorities ruled that CLECs may use spare special access circuits for local exchange traffic, they held that CLECs must do so at tariffed rates. *See* Freeberg Recip. Comp. Decl. ¶ 25, *see*

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<sup>42/</sup> *See generally* SGAT § 7.3; *but see* Iowa SGAT § 7.3.4.1.1 (SGAT provision stating that "[c]onsistent with 199 IAC 38.6, each Party shall terminate [local] calls on a mutual exchange of traffic basis, at no charge to the originating provider" to reflect state law requirement that results in no payments to Qwest or CLECs for terminating local traffic).

<sup>43/</sup> Freeberg Recip. Comp. Decl. ¶¶ 20, 26.

<sup>44/</sup> *Id.* ¶¶ 22-23.

also, e.g., *Colorado Hearing Commissioner Volume IA Impasse Issues Order* at Section II.J.

These rulings accepted Qwest's position that it not be required to "ratchet down" the flat transport rate (*i.e.*, charge proportionally less) when spare capacity is used to carry local traffic, rather than requiring CLECs to continue to pay Qwest's federally tariffed special access rate (which is higher than TELRIC rates they pay for interconnection). *See Freeberg Recip. Comp. Decl.* ¶ 24-25.

Qwest also provides Tandem Switched Transport to enable interconnecting carriers to complete local calls to and from every Qwest end office connected to a Qwest tandem by establishing just one new trunk group. *Id.* ¶ 26. Tandem Switched Transport is a per-minute charge to recover the cost of tandem switching, and the cost of transport from the tandem to the end office, since trunks between these offices are used in "common" with other services. *Id.* ¶ 27. A per-minute, mileage-sensitive rate also applies to common transport from host switching offices to remote switching offices in a host-remote switching cluster. *Id.* ¶ 28.

Call Termination charges help recover the cost of switching of local telecommunications traffic at the terminating carrier's end office switch (or equivalent facility) for delivery to the called party's premises. Where reciprocal compensation payments are required, Qwest has charged, and has paid, a per-minute rate for the use of the end office terminating switch. *Id.* ¶ 29.

While not relevant to whether Qwest has demonstrated checklist item 13 satisfaction, Qwest has implemented the *FCC ISP Order* on reciprocal compensation for Internet-bound traffic. Where Qwest and another carrier were engaged in a bill-and-keep form of reciprocal compensation at the time the *FCC ISP Order* on reciprocal compensation for Internet-bound traffic was released, the carriers were unaffected. Elsewhere, under Section

7.3.4.3 of the SGAT, Qwest generally elects to exchange all Internet-bound traffic at the FCC-ordered rate, and Qwest makes clear the rate for ISP-bound traffic applies in lieu of the End Office Call Termination rate and the Tandem Switched Transport rate. SGAT § 7.3.4.3. Since Qwest has elected to exchange ISP-bound traffic at the rates ordered in the *FCC ISP Order*, for usage-based intercarrier compensation configurations exchanging traffic pursuant to interconnection agreements as of the *FCC ISP Order*'s April 18, 2001, adoption, compensation is paid at the rates specified therein. *See generally id.* §§ 7.3.6.1-7.3.6.2. 45/

In addition, CLECs have two options for the rating of EAS/Local traffic, *i.e.*, traffic subject to §251(b)(5) of the Act: (1) in lieu of the End Office Call Termination rate and Tandem Switched Transport rate, the rates applicable to § 251(b)(5) traffic will be the same as those established for ISP-bound traffic, *id.* § 7.3.4.4.1; or (2) at the "voice" rate established by the state regulator, and pursuant to a process collaboratively established by Qwest and the CLEC to distinguish § 251(b)(5) traffic from ISP-bound traffic. *Id.* § 7.3.4.4.2. 46/

Qwest also offers transit service that allows CLECs to interconnect indirectly with other local carriers using Qwest's tandem, thus avoiding the CLEC's investment in facilities otherwise necessary to exchange local calls with non-Qwest local carriers. SGAT § 7.3.7.1. The Transit Traffic rate element includes tandem switching and transport charges and applies to all

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45/ As to Internet-bound traffic exchanged prior to the *FCC ISP Order*, the Colorado PUC mandated a bill-and-keep mechanism, whereby no reciprocal compensation is paid for ISP-bound traffic, the Iowa Board long held that no reciprocal compensation will be paid for ISP-bound traffic, the Nebraska Commission determined that certain existing Qwest interconnection agreements required Qwest to make reciprocal compensation payments to CLECs with respect to ISP-bound traffic (and Qwest made reciprocal compensation payments to those CLECs for such traffic), and the ND PSC determined the *FCC ISP Order* established that Section 251(g) of the Telecommunications Act serves to exclude ISP-bound traffic from the reciprocal compensation provisions of Section 251(c). *See Freeberg Recip. Comp. Decl.* ¶¶ 18-19 and cases cited therein.

46/ *See* SGAT §§ 7.3.4.4.1, 7.3.4.4.2. These provisions of the SGAT reflect consensus language agreed upon by Qwest and AT&T.

usage between CLECs that transit Qwest's tandem switch. 47/ The originating carrier is responsible for paying the appropriate rates to two carriers, the terminating carrier and the transit carrier. Qwest and the terminating carrier may exchange traffic records to enable the terminating carrier to collect reciprocal compensation from the originating carrier.

Qwest exchanges significant volumes of traffic in the five states covered by this Application, and where required pays reciprocal compensation therefor, pursuant to its SGAT and negotiated, Regulatory Agency-approved interconnection agreements, each of which provides for a version of reciprocal compensation. Over the 12 months from April 2001 through March 2002, Qwest paid CLECs \$11,063,494 and billed \$4,184,732 for reciprocal compensation in Colorado based on traffic exchanged with 26 actively operating CLECs, and Qwest exchanged 1.96 billion minutes of usage with those CLECs in March 2002. Freeberg Recip. Comp. Decl. ¶ 55. In Idaho, from April 2001 through March 2002, Qwest paid CLECs \$737,125 and billed \$179,070 for reciprocal compensation in Idaho based on traffic exchanged with 7 actively operating CLECs, and exchanged 120,505,798 minutes of usage in March 2002. Freeberg Recip. Comp. Decl. ¶ 63. In Iowa, Qwest exchanged 173,264,211 minutes of usage with 16 actively operating CLECs in Iowa for the month ending March 31, 2002. Freeberg Recip. Comp. Decl. ¶ 69. In Nebraska, Qwest paid CLECs \$3,472,495 and billed \$239,806 for reciprocal compensation from April 2001 through March 2002 based on traffic exchanged with 8 actively operating CLECs, and Qwest exchanged 225,923,136 minutes of usage. Freeberg Recip. Comp. Decl. ¶ 76. Finally, in North Dakota, Qwest exchanged 30,095,529 minutes of usage with 4 actively operating CLECs in March 2002. Freeberg Recip. Comp. Decl. ¶ 82.

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47/ *Id.* Transit traffic may also flow between a CLEC and wireless local carrier or between a CLEC and a non-Qwest ILEC independent company. Freeberg Recip. Comp. Decl. ¶ 35.

Qwest measures reciprocal compensation performance using two performance measures. The BI-3 PID evaluates the accuracy with which Qwest bills CLECs, focusing on the percentage of billed revenue adjusted due to errors, by measuring the billed revenue minus amounts adjusted off bills due to errors, as a percentage of total billed revenue, with BI-3B measuring reciprocal compensation minutes of use (excluding billing adjustments due to CLEC-caused errors). The BI-4 PID measures the completeness with which Qwest bills revenue for local minutes of use associated with local interconnection for purposes of reciprocal compensation. Specifically, BI-4B measures the percentage of revenue associated with local minutes of use appearing on the correct bill. Qwest's performance under these PIDs is as follows:

**a) Colorado**

With only two non-competition-affecting exceptions, Qwest's performance in Colorado under BI-3B and BI-4B for the four-month period January through April 2002 was perfect. Aside from the exceptions, Qwest met both the 95% billing completeness and 95% billing accuracy benchmarks in each of the past four months, with bills that not only met the benchmark, but were both 100% complete and 100% accurate. *See* Att. 5, App. D, Colorado Performance Results, at 262. The sole Colorado-specific exception occurred in March 2002. Freeberg Recip. Comp. Decl. ¶ 56. For that month, though Qwest's bills were 100% complete and met the BI-4B benchmark, Qwest's performance under BI-3B fell just short of the benchmark in that Qwest's billing accuracy was 91.15%. *Id.* The deviation was entirely the result of a CLEC, at its request, changing from reciprocal compensation to bill-and-keep. *Id.* This necessitated crediting the CLEC's for the period from November 16, 2001, through December 20, 2001, which caused billing accuracy to drop for the month in which the adjustment took place (March 2002). *Id.* There was no claim that bills during this time were

inaccurate, however. Indeed, had the CLEC's change from reciprocal compensation to bill-and-keep not taken place, Qwest's bills would have been 100% accurate, as they were in the other months discussed above. *See id.*; Att. 5, App. D, Colorado Performance Results, at 262.

The only other exception arose in mid-December 2001, and negatively affected Qwest's commercial performance results for BI-4B for April 2002. *See* Att. 5, App. D, Colorado Performance Results, at 262. On January 17, 2002, Qwest reported to its sub-contractor Agilent Technologies ("Agilent"), who provides software used by Qwest to monitor and collect call detail for billing, that since December 11, 2001, an excessive number of calls were lacking the "release" message. Freeberg Recip. Comp. Decl. ¶ 57. This resulted in the calls being rated as ongoing after they had in fact terminated. *Id.* This problem, which Qwest discovered in its then monthly edit of such calls, caused a higher number of call minutes to be billed than actually occurred, and necessitated refunds and credits to CLECs, which in turn negatively affected April commercial performance under the BI-4B PID in several states. *See id.* Qwest has since taken steps to remedy the problem. *Id.* ¶ 59.

**b) Idaho**

With the exception of the adjustment affecting BI-4B discussed above, Qwest's performance in Idaho for the period January through April 2002 under BI-3B and BI-4B was perfect. *See* App. D, Idaho Performance Results, at 238. Qwest met both the 95% billing completeness and 95% billing accuracy benchmarks each of the four months, with bills that not only met the benchmark, but were 100% accurate and at least 99.8% complete (except April 2002, as noted). *Id.* These commercial performance results clearly show Qwest accurately tracks and bills reciprocal compensation with CLECs in Idaho.

**c) Iowa**

The reciprocal compensation BI-3B and BI-4B PIDs do not apply in Iowa because the Iowa Board has ordered bill-and-keep as a matter of state law, so Qwest and the CLECs do not exchange bills per se. *Id.* ¶ 70. Nonetheless, through the SGAT, in the event the Iowa Board later sees fit, Qwest has established a concrete and legal obligation to pay reciprocal compensation in a timely fashion. *Id.* The SGAT states, "Amounts payable under this SGAT are due and payable within thirty (30) calendar days after the date of invoice." SGAT § 5.4.1.

**d) Nebraska**

Qwest has far surpassed the 95% billing accuracy benchmark under BI-3B by providing bills that were 100% accurate in February, March and April 2002 (and, in fact, dating back to June 2001), and 99.99% accurate in January 2002. Similarly, with the exception of the region-wide adjustment affecting BI-4B discussed above, Qwest's bills have accounted for practically all (99.6% or better) of CLEC traffic over Qwest's network for the last year (with the exception of May 2001, when Qwest billing completeness was approximately 97%), with Qwest's bills including 100% of CLEC traffic in each of the past seven months (except April 2002, as noted). This performance far exceeds the BI-4B 95% completeness benchmark. Together, these commercial performance results show that Qwest accurately tracks and bills reciprocal compensation with CLECs in Nebraska. *See App. D, Nebraska Performance Results at 235.*

**e) North Dakota**

*Wholesale Volume:* In March 2001, Qwest exchanged traffic with 4 actively operating CLECs pursuant to negotiated interconnection agreements. Each agreement provides for a version of reciprocal compensation, and has been approved by the ND PUC pursuant to either or both of Sections 252(a) and 252(b) of the Act. Pursuant to these interconnection

agreements, Qwest exchanged 30,095,529 minutes of usage with CLECs in March 2002.

Freeberg Recip. Comp. Decl. ¶ 82

*Performance.* With one non-competition-affecting exception (discussed below), Qwest's performance in North Dakota under BI-3B and BI-4B, for the four-month period January through April 2002 was perfect. 48/ Aside from the one exception, Qwest met both the 95% billing completeness and 95% billing accuracy benchmarks in each of the four months, with bills that not only met the benchmark, but were both 100% complete and 100% accurate. *See* App. D, North Dakota Performance Results, at 320, 322. The sole exception occurred in January 2002, when Qwest's bills were 100% complete and met the BI-4B benchmark, but its BI-3B results were negatively affected by an error requiring rate adjustment of contracted fixed and variable usage rates that had been manually entered incorrectly into Qwest's integrated access billing system ("IABS") tables upon execution of its interconnection agreement with one carrier on February 20, 2001. Freeberg Recip. Comp. Decl. ¶ 83. At that time, the variable usage rates, which are higher than the fixed rates, were incorrectly entered into the table as the fixed rates, and vice versa. *Id.* The discovery of this error and rate adjustments made to one customer (retroactive to February 20, 2001) notably affected Qwest's January 2002 BI-3B results. 49/ Otherwise, Qwest's bills were both 100% accurate and complete going back to May 2001. *See* App. D, North Dakota Performance Results, at 320, 322. In any event, a single data entry error requiring billing adjustments reflected in one month's commercial performance results is not a

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48/ The region-wide LDC issue discussed above under BI-4B did not affect Qwest's performance for April 2002 under BI-4B in North Dakota. Freeberg Recip. Comp. Decl. ¶ 83 n.98.

49/ *Id.* Since the discovery of this error, the IABS personnel have implemented an improved process requiring rates entered manually by one worker be verified by a second worker before being activated in billing tables. This quality control assures that this type of error will not reoccur in the future. *Id.*

compliance-significant event under applicable precedent. *See, e.g., Connecticut 271 Order*, 16 FCC Rcd at 14159 ¶ 26. Qwest's commercial performance results clearly show Qwest accurately tracks and bills reciprocal compensation with CLECs.

#### **14. Checklist Item 14: Resale**

Qwest makes available for resale, at wholesale rates established by the respective State Authority, all of the telecommunications services it offers its retail customers who are not telecommunications carriers. 47 U.S.C. § 271(c)(2)(B)(xiv). Declaration of Lori Simpson, Resale ("Simpson Resale Decl."), Att. 5, App. A; Declaration of D.M. Gude, Resale Discounts ("Gude Decl."), Att. 5, App. A. Qwest offers its resale services under rates, terms and conditions that are reasonable and nondiscriminatory and thereby complies with Checklist 14 in Colorado, Idaho, Iowa, Nebraska and North Dakota. SGAT §§ 6.1.1 and 6.2.3. Through its SGAT and state-approved interconnection agreements, Qwest has undertaken a legally binding obligation to offer for resale by CLECs telecommunications services that are equal in quality to, and provided in substantially the same time and manner as, the telecommunications services that Qwest provides to itself and its retail end users. Simpson Resale Decl. at ¶ 11.

As of March 31, 2002, the most recent period for which data are available, Qwest was providing resale services to reseller CLECs in large numbers in each of the application states, as follows: *Colorado* – 35,085 resold lines to 34 reseller CLECs; *Idaho* – 7,500 resold lines to 14 reseller CLECs; *Iowa* – 11,114 resold lines to 16 reseller CLECs; *Nebraska* – 10,019 resold lines to nine CLECs; and *North Dakota* – 17,504 resold lines to 18 CLECs. Simpson Resale Decl. at ¶ 12.

In accordance with FCC rules, Qwest imposes only reasonable and nondiscriminatory limitations on the resale of telecommunications products and services. Consistent with 47 C.F.R. § 51.613, CLECs may resell a Qwest service only to the same class of

end user to which Qwest itself sells that service where such restriction has been approved by the State Authority. SGAT § 6.2.2; Simpson Resale Decl. at ¶ 21. The SGAT lists state-approved restricted classes. SGAT §§ 6.2.2.8 and 6.2.2.3; Simpson Resale Decl. at ¶ 21. Qwest grants resellers access to promotional offerings of more than 90 days at the wholesale discount, consistent with Commission policy. SGAT § 6.2.2.1; Simpson Resale Declaration at ¶ 22. 50/ Resellers may sell any of Qwest's contract service arrangements to any end user customer or customers that meet the terms and conditions of that particular arrangement, subject to termination liabilities consistent with Commission precedent. SGAT § 6.2.2.7; Simpson Resale Decl. at ¶ 23; *New York 271 Order*, 15 FCC Rcd at 4147-48 (¶ 390).

Pursuant to SGAT § 6.1.1, Qwest complies with its obligations under Section 251(c)(4) of the Act to offer for resale, at wholesale rates, any "advanced" telecommunications service that Qwest provides "at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4); *see generally ASCENT*, 235 F. 3d at 664; *Connecticut 271 Order*, 16 FCC Rcd at 14160-61 (¶ 28); Simpson Resale Decl. at ¶ 24. 51/ Such services include Frame Relay service, Qwest DSL service, 52/ DS1 service, DS3 service and all other

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50/ See *Local Competition First Report and Order*, 11 FCC Rcd at 15970-71 (¶ 950) (affirming 90 days as the point "when a promotional price ceases to be 'short term' and must therefore be treated as a retail rate for an underlying service").

51/ Qwest's DSL service is provided from within its regulated entity, Qwest Corporation, not by an affiliate.

52/ In the *Arkansas/Missouri 271 Order*, the Commission distinguished among "three categories of DSL-related service: (1) retail telecommunications service which it offers for resale at discount, (2) wholesale telecommunications services which it offers to unaffiliated ISPs, and (3) retail information service." 16 FCC Rcd at 20758 (¶ 79). Of these, only the first – unbundled DSL transmission services that an ILEC provides to end users – is subject to the resale requirements of Section 251(c)(4). *See generally id.* at 20758-60 (¶¶ 79-82); *Broadband Access NPRM*, 17 FCC Rcd at 3030, 3032-33 (¶¶ 20, 24-25). Qwest complies with these requirements by providing for resale the first category of service ("Qwest DSL Service"). Simpson Resale Declaration at footnote 44. Although some CLECs continue to argue that

“telecommunications services” that Qwest offers at retail to its end users. Simpson Resale Decl. at ¶ 24. <sup>53/</sup> CLECs may resell, over lines on which they are reselling voice service, the DSL transmission services that Qwest offers directly to end users. Simpson Resale Decl. at ¶ 24; *accord Rhode Island 271 Order, 17 FCC Rcd at 3347-48 (¶ 95).*

Qwest currently provides high capacity and DSL circuits on a resold basis to CLECs, as follows: as of March 31, 2002, Qwest was providing 208 resold Qwest DSL, 1,504 resold DS1 and four resold DS3 services to CLECs in its fourteen states, including the application states, as follows: Colorado: 19 resold DSL, 213 resold DS1 and one resold DS3 services; Idaho: 9 resold DSL and 32 resold DS1 services; Iowa: 4 resold DSL and 124 resold DS1 services; Nebraska: 5 resold DSL and 14 resold DS1; and North Dakota: 2 resold DSL and 15 resold DS1 services. Simpson Resale Decl. at ¶ 25.

Qwest also offers to CLECs for resale ancillary services such as operator and directory assistance services, *id.* at ¶¶ 26-29, discussed more fully in Section III(B)(7) above. Qwest further provides CLECs with the information they need to bill customers in a timely fashion. *Id.* at ¶ 30.

When evaluated both individually and as a whole, Qwest’s performance in installing, maintaining and repairing its resold products has been exemplary across all products and performance measures, and demonstrates that CLECs are receiving nondiscriminatory

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services in the third category also trigger certain resale requirements, the Commission has categorically rejected that argument as a basis for opposing a Section 271 application. *See Arkansas/Missouri 271 Order, 16 FCC Rcd at 20759-60 (¶ 82).*

<sup>53/</sup> Details about Qwest’s advanced telecommunications offerings available for resale can be found in Qwest’s Resale Product Catalogs (“PCAT”). Simpson Resale Decl. at n.45.

treatment with respect to resale in the application states. 54/ The standard for resale performance measures is parity with retail service, and Qwest is achieving parity under the vast majority of resale performance indicators. Simpson Resale Decl. at ¶¶ 36-48. Qwest meets the standard of providing services to requesting telecommunications carriers for resale that are substantially equal in quality, subject to substantially the same conditions, and provided within substantially the same provisioning time intervals, as that it provides to its retail customers. *Id.*; see 47 C.F.R. § 51.603(b).

Qwest's wholesale discount rates for telecommunications services comply with the requirements of Sections 251(c)(4) and 252(d)(3), as well as 271(c)(2)(B)(xiv) of the 1996 Act. Gude Decl. at ¶ 7. Qwest's wholesale rates for resale have been set by the respective State Authority based on the retail rates Qwest charges subscribers for telecommunications services, less the portion the State Authority deemed attributable to retailing costs Qwest avoids when a reseller CLEC services the end-user customer instead of Qwest. *Id.* Consistent with resale provisions of the 1996 Act and with the FCC's *First Report and Order*, 55/ the State Authorities evaluated avoided cost studies to determine the costs that Qwest avoids when providing telecommunications service for resale. Gude Decl. at ¶¶ 10, 16, 18, 22, 25. The resale discounts specified by the respective State Authority have been incorporated at Section 6.0 of Exhibit A of Qwest's approved SGAT for each application state. *Id.* at ¶¶ 15, 17, 21, 24, 26.

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54/ The performance measurements and products that apply to resale are set forth at paragraphs 33 to 34 of the Simpson Resale Declaration.

55/ See *Local Competition First Report and Order*, 11 FCC Rcd at 15958 (¶ 916).

**C. Qwest Offers CLECs Nondiscriminatory Access to its Operations Support Systems**

**1. Qwest's Regionwide OSS Satisfies the Requirements of Section 271 in Colorado, Idaho, Iowa, Nebraska and North Dakota**

Qwest provides CLECs with access to its systems, databases and personnel -- collectively referred to as "OSS" -- on a nondiscriminatory basis and in accordance with the FCC's rules. *See generally* Declaration of Lynn M.V. Notarianni and Christie L. Doherty, Operations Support Systems ("OSS Declaration"), Att. 5, App. A. For OSS functions that are analogous to those that Qwest provides to itself, Qwest offers CLECs access that enables them to perform those functions in "substantially the same time and manner" as Qwest. *See* OSS Declaration at ¶ 9; *see also* Georgia/Louisiana 271 Order at App. D ¶ 27. For those OSS functions that have no retail analogue, Qwest offers CLECs access "sufficient to allow an efficient competitor a meaningful opportunity to compete." *See* OSS Declaration at ¶ 9; *see also* Georgia/Louisiana 271 Order at App. D ¶ 28. 56/

Qwest provides CLECs with access to its OSS so CLECs can formulate and place orders for network elements or resale services, install service to their customers, order maintenance and repair work, and bill customers. *See generally* OSS Declaration at Sections III-VII; *see also* Georgia/Louisiana 271 Order at App. D, ¶ 25.

Qwest also provides technical assistance to CLECs that use these functions. *See generally* OSS Declaration at Section VIII. In addition, Qwest provides documentation that

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56/ Qwest's OSS uses virtually identical systems and processes throughout the company's 14-state region. *See* OSS Declaration at ¶¶ 35-36. Differences among the systems and process in Qwest's Western, Central and Eastern regions (due to operational differences among the legacy systems of the former Pacific Northwest Bell, Mountain Bell and Northeastern Bell) are imperceptible to CLECs and end users. A Regional Differences Assessment conducted by KPMG prior to commencement of its test of Qwest's OSS confirmed that the Qwest's OSS is materially consistent across the region. *Id.*

enables CLECs to build an EDI interface and provides testing environments that enable CLECs to test their EDI interfaces. *See id.* These matters are discussed in this brief in the section below labeled "Change Management and Technical Assistance."

The Commission has held that "[t]he most probative evidence that OSS functions are operationally ready is actual commercial usage." *Georgia/Louisiana 271 Order* at App. D ¶ 31. The FCC further has stated that it "looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of [checklist compliance]." *Id.* Qwest is providing CLECs with nondiscriminatory access to its OSS at commercial volumes, and has met or exceeded virtually all of the required standards or benchmarks for OSS over the past four months or longer in each of Colorado, Idaho, Iowa, Nebraska and North Dakota. *See generally* OSS Declaration at Sections III(A), III(B), IV(A)(1), IV(A)(3), IV(B), VI(A)(1), VII(B), VIII(A)(2), VIII(B)(2) and VIII(C)(3); Williams Declaration at ¶¶ 93-171. Those few instances where Qwest missed a PID properly may be viewed as aberrations from otherwise satisfactory performance, and thus do not reflect a pattern of performance. *Id.*

To support its commercial performance results, and to address those aspects of its OSS for which there are no assigned PIDs, Qwest subjected its OSS to testing by an independent third party (KPMG). KPMG's test, which was designed and executed under the ROC's supervision, is described more fully in the next section and in Section II of the OSS Declaration. The results of the Third Party Test support the conclusion that Qwest is providing -- and will continue to provide -- CLECs with pre-ordering, ordering, provisioning, maintenance and repair, and billing capabilities, as well as technical assistance, on a nondiscriminatory basis. As explained below, the few unresolved issues in the test do not adversely affect this conclusion.

## **2. The Third Party OSS Test and the ROC**

The ROC was convened by 13 of the 14 states in the Qwest region (including all five of the application states) to test Qwest's OSS and ensure that it is available to CLECs on a nondiscriminatory basis. *See* OSS Declaration at ¶ 19. The ROC process was designed to facilitate collaboration among the states. It enabled them to pool their resources so that each state could benefit from a comprehensive approach to testing. *See id.*

To Qwest's knowledge, the ROC test was the most comprehensive and collaborative of all of the OSS tests conducted to date. Each aspect of the ROC test's development and execution was subject to input from numerous parties, including CLECs and state regulators. *See id.* at ¶¶ 23, 31. The ROC also kept the FCC and the Department of Justice informed of the test's progress through regular briefings. The test itself was designed and executed in a thoughtful, deliberate and comprehensive manner to ensure that every party's views could be heard and receive adequate consideration. *See id.*

A key component of the ROC process was the formation of a TAG, which monitored and participated in every aspect of the test. *See* OSS Declaration at ¶ 23. The TAG assisted in every aspect of the test process. *See id.* at ¶¶ 31-32. The TAG was responsible for generating a Test Requirements Document ("TRD"), a Master Test Plan ("MTP"), and the PIDs described above. *See id.* at ¶¶ 26, 28 and 30. Every component of the test was designed, discussed, evaluated -- and often reevaluated -- in TAG meetings. *See id.* at Sections II(A) and II(B). Proposals to alter, revise and retest aspects of the test also were discussed, and often subject to approval, by the TAG. On the rare occasions when the TAG could not agree, disputes could be escalated to the Steering Committee, and, if necessary, to the Executive Committee, through an established a dispute resolution procedure. *See id.* at ¶ 32.

The ROC OSS test consisted of a series of transactional and operational evaluations that tested the five primary components of Qwest's OSS (pre-ordering, ordering, provisioning, maintenance and repair, and billing), the technical assistance Qwest offers CLECs, and Qwest's Change Management Plan. *See id.* at ¶¶ 40-41. KPMG and Hewlett Packard Consulting ("HP") together executed a total of 32 tests, consisting of 711 evaluation criteria. *See* Qwest OSS Evaluation Final Report, Version 2.0, May 28, 2002 ("*Final Report*"), Att. 5, App. F, Tabs 3-4. Of those 711 criteria, 685 had defined success measures and 26 were "diagnostic." *Id.* at 20-61. Qwest satisfied 645 of the 685 relevant criteria and did not satisfy only 11 (1.6%). *Id.* The remaining 29 criteria were deemed "unable to determine" or "not applicable." *Id.*

KPMG adopted a military-style, "test-until-you-pass" philosophy. *See id.* at 9. When Qwest did not pass a test, an Observation or Exception identifying the problem was issued, and Qwest worked to resolve the problem before it was retested. A total of 242 Observations and 256 Exceptions were issued in the course of the test, and Qwest successfully resolved all but one Observation and 14 Exceptions. *See* OSS Declaration. at ¶ 39. Yet even in the isolated instances where Qwest did not resolve the Observation or Exception (or where KPMG and HP were "unable to determine" whether Qwest passed a test criterion), there is sufficient evidence to demonstrate that Qwest nonetheless satisfies the applicable requirements of Section 271. At the completion of testing, KPMG issued a Final Report describing every aspect of the test process and KPMG's findings and conclusions. *See id.* at ¶¶ 54-55.

In sum, the ROC OSS test was comprehensive, thorough, and collaboratively conducted. The State Authorities properly relied on the results of the test in concluding that Qwest's OSS satisfies the requirements of Section 271. This Commission therefore should accord those conclusions substantial deference.

### **3. Qwest's OSS Performance**

#### **a) Electronic and Manual Interfaces**

Qwest provides an array of electronic gateways and manual processes through which CLECs can access and interact with Qwest's OSS. *See* OSS Declaration at ¶¶ 58-66, 167-194, 424-450. The Commission has held that, in order to obtain Section 271 relief, a BOC must demonstrate that it has "developed sufficient electronic and manual interfaces to allow [CLECs] equivalent access to all of the necessary OSS functions," and that its OSS "is designed to accommodate both current demand and projected demand." *Georgia/Louisiana 271 Order* at App. D-12 ¶ 30. Qwest unquestionably satisfies both requirements.

First, CLECs have timely access to all necessary OSS functions. Qwest makes available to CLECs two electronic gateways, IMA-EDI and the IMA-GUI, for pre-ordering and ordering via LSRs. *See* OSS Declaration at ¶¶ 59-65, 67-184. Qwest makes available to CLECs two additional electronic gateways, EXACT and TELIS, for ordering via ASRs. *Id.* at ¶¶ 185-194. Qwest provides CLECs with two electronic gateways, EB-TA and CEMR, for M&R activities. *Id.* at ¶¶ 426-443. In addition, CLECs can submit pre-ordering queries by telephone and fax, and orders and M&R requests by fax. *Id.* at ¶¶ 66, 183-184, 444.

Second, Qwest's gateways -- and, more generally, Qwest's OSS -- are capable of supporting both current and future demand. The electronic and manual interfaces discussed above have been proven to function successfully in a commercial setting. *See* OSS Declaration at ¶¶ 334-339, 371-375. During the period from May 2001 through April 2002, the following numbers of CLECs submitted commercial volumes of LSRs to Qwest through IMA-EDI and the IMA-GUI:

	CO	ID	IA	NE	ND
IMA-EDI	16	4	8	8	5
IMA-GUI	49	15	27	16	15

*See id.* at ¶ 168, n.221; ¶ 176, n.234. For the same period in these five states, these CLECs submitted a total of 277,452 LSRs via IMA-EDI, 220,877 via IMA-GUI, and 47,473 by fax; and they submitted 18,278 ASRs via EXACT and TELIS . *See* OSS Declaration at ¶ 334-339. Over the past four months, Qwest has been making its IMA-EDI, IMA-GUI, EB-TA and CEMR gateways available to CLECs more than 99.25% of the time in each of the five application states, meeting -- and often exceeding -- the required benchmark. *See id.* at ¶¶ 169-174, 177-182, 429-443; Williams Declaration at ¶¶ 94-95.

Finally, KPMG's *Final Report* confirmed that Qwest is capable of meeting current and projected demand. Qwest successfully satisfied every aspect of KPMG's POP Volume Performance Test, which was executed for pre-order and order transactions using normal volumes and included both a "Peak Test" and a "Stress Test," which measured Qwest's interface and systems performance at 150% and 250% of normal volumes, respectively. *See Final Report* at 258-266; OSS Declaration at ¶¶ 371-375. Qwest also successfully satisfied KPMG's System Scalability Test. *See Final Report* at 590-591.

**b) Pre-ordering**

The Commission has held that, in order to qualify for Section 271 relief, a BOC must demonstrate that "(i) it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies; (ii) [CLECs] successfully have built and are using application-to-application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering

interfaces; and (iii) its pre-ordering systems provide reasonably prompt response times and are consistently available in a manner that affords competitors a meaningful opportunity to compete.” *See Georgia/Louisiana 271 Order* at App. D ¶ 33. Qwest meets each of these requirements.

Qwest provides CLECs with pre-ordering capabilities that meet all required Section 271 criteria. CLECs can perform the following pre-ordering transactions through Qwest’s OSS interfaces: Address Validation; Customer Service Records; Service Availability; Reserve and Cancel Telephone Numbers; Facility Availability; Loop Qualification (for qualifying Qwest DSL for Resale and Unbundled Loop); Raw Loop Data; Connecting Facility Assignment; Meet Point Query; Schedule and Cancel Appointments; and Access to Directory Listings. *See OSS Declaration* at ¶ 69.

*Loop Qualification:* Consistent with its policies promoting the deployment of broadband, the Commission has in the past paid particular attention to a BOC’s ability to provide CLECs with complete and effective loop qualification information. The FCC has held that incumbent carriers must provide CLECs “with access to all of the same detailed information about the loop that is available to the incumbent[], and in the same time frame, so that a [CLEC] can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the [CLEC] intends to install.”

*Georgia/Louisiana 271 Order* at App. D ¶ 33.

Through its IMA-EDI and IMA-GUI interfaces, Qwest offers CLECs three loop qualification tools that enable CLECs to access loop qualification information: Qwest DSL for Resale, Unbundled Loop Qualification, and the Raw Loop Data tool. *See OSS Declaration* at ¶ 109. These tools do not “filter” or “digest” the underlying information. *See id.* The

information provided to CLECs also does not differ materially from the information Qwest provides to itself. *See id.* Qwest satisfied all 11 of the applicable loop qualification test criteria during the Third Party Test. *See Final Report* at 126-132; OSS Declaration at ¶ 159.

*Pre-order To Order Integration:* The FCC has held that a BOC can demonstrate that CLECs have pre-order/order integration capability by showing that the BOC parses CSR information into identifiable fields for CLECs; or, if the BOC does not provide parsed pre-order information, that CLECs can and have been able to integrate successfully. *See Georgia/Louisiana 271 Order* at ¶ 120. Qwest makes both of these showings. *See OSS Declaration* at ¶¶ 195-201.

CLECs have built and are using application-to-application interfaces that successfully integrate returned pre-order information into subsequent orders. Qwest parses CSR information into identifiable fields for CLECs. Qwest's EDI Disclosure Document sets out for each pre-order transaction the parsed elements returned, and identifies the LSR field to which a particular data element relates. *See id.* at ¶ 197. As part of the Third Party Test, HP successfully developed an EDI interface that integrated pre-order/order data, and did so using documentation and tools that are available to all CLECs. *See Final Report* at Appendices B, C; OSS Declaration at ¶ 198. During actual transaction testing, HP successfully processed thousands of LSRs by utilizing pre-order/order integration.

HP's experience is consistent with that of CLECs that also have successfully integrated pre-order/order data. Both Telcordia and Nightfire, which design and construct EDI interfaces for CLECs, have stated that they have successfully been able to integrate pre-order/order data for their customers using Qwest's OSS. *See id.* at ¶ 200.

*Pre-ordering Response Times:* Qwest's commercial performance results

demonstrate that the company provides CLECs with reasonably prompt responses to pre-order queries and thus affords CLECs a meaningful opportunity to compete. *See id.* at ¶¶ 72-77, 79-84, 88-93, 96-101, 103-108, 118-129, 131-136. In all five of the application states in each of the last four months, Qwest has met or exceeded each of the eight pre-ordering transaction types for which performance benchmarks have been developed. *See id.*; Williams Declaration at ¶ 99. Moreover, in all but a few instances over the last 12 months, Qwest's response times have been significantly faster than the required benchmarks. *See id.* Qwest also has consistently met the 0.5% benchmark for pre-order timeouts in each of the application states for each of the last 12 months. *See* OSS Declaration at ¶¶ 142-146; Williams Declaration at ¶ 99. Although benchmarks have not been established for three pre-ordering transaction types (Connecting Facility Assignment, Meet Point Query, and Access to Directory Listings), Qwest's performance during the Third Party Test demonstrates that CLECs can access these functions on a nondiscriminatory basis. *See Final Report* at 73-79.

**c) Ordering**

Qwest's commercial performance and the results of the Third Party Test demonstrate that Qwest provides CLECs "with access to the OSS functions necessary for placing wholesale orders." *Georgia/Louisiana 271 Order* at App. D ¶ 36. The FCC "looks primarily at the [BOC's] ability to return order confirmation notices, order reject notices, order completion notices, and jeopardies, and at the BOC's order flow-through rate" to determine whether the BOC provides CLECs with ordering capabilities in a nondiscriminatory manner. *Id.* Qwest meets the FCC's requirements in each of these areas. *See generally* OSS Declaration at Section IV.

*Confirmation Notices:* Qwest returns an FOC to a CLEC to inform the CLEC that its LSR is valid and that the service order associated with its LSR has been issued with an established due date. *See* OSS Declaration at ¶ 206. The PIDs used to assess Qwest's performance in this area evaluate FOCs in a variety of formats covering a wide range of product types and product groups. *See id.* at ¶¶ 208-210. The commercial performance data show that, with only minor exceptions, Qwest has returned FOCs to CLECs on a timely basis and in compliance with the applicable PID in each of the past four months in each of the application states. *See id.* at ¶¶ 212-231. The results of the Third Party Test corroborate the commercial data. KPMG found that Qwest's systems provide timely FOCs in response to Resale, Unbundled Loop, LNP and UNE-P LSRs submitted via IMA-EDI and the IMA-GUI. *See Final Report* at 83-84, 85-88.

Although virtually all of the Observations and Exceptions identified in the course of the Third Party Test were closed/resolved before the test concluded, Exception 3061 -- noting that Qwest did not provide HP with confirmation notices for Resale PBX orders within the 95% benchmark of PO-5B -- was closed/unresolved. *See Final Report* at 86-87; OSS Declaration at ¶¶ 359-365. The commercial data show, however, that Qwest has consistently returned FOCs to CLECs in compliance with PO-5B, which includes Resale PBX orders, in each of the last four months in each of the application states. *See* OSS Declaration at ¶¶ 212-231; Williams Declaration. at ¶ 123. In fact, Qwest consistently has met PO-5B in nearly each of the last 12 months in each of these states. *Id.* These strong commercial performance results demonstrate that Qwest is satisfying this criterion, notwithstanding the closed/unresolved status of Exception 3061.